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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/845,669	04/30/2001	Brian James Clark	26548-0007	2276

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EXAMINER

GREIMEL, JOCELYN

ART UNIT

PAPER NUMBER

3624

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/845,669	<b>Applicant(s)</b> CLARK ET AL.	
	<b>Examiner</b> Jocelyn W. Greimel	<b>Art Unit</b> 3624	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 35-83 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 35-83 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>06/06/02, 12/12/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 35-83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Payne et al (US Patent No. 6,343,272, hereinafter Payne) as applied to claims 35, 50 and 68 above, and further in view of Schirripa (US Patent No. 6,636,834).

4. Regarding claims 35, 50 and 68, Payne teaches the method, system and implementation of an index-linked insurance product having a term and an annual guarantee (col. 1, lines 60-67 – col. 2, lines 1-12). Payne discloses allocating at least a portion of a premium payment associated with the index-linked life insurance product to a fixed income investment (col. 3, lines 59-67 – col. 4, lines 1-2) and projecting an annual fixed income yielded for the fixed income investment (col. 2, lines 54-67).

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5. Payne discloses determining a hedged investment budget based at least in part on the projected annual fixed income yield and an estimated cost of the annual guarantee over the term (col. 2, lines 54-67; col. 3, lines 4-67 – col. 4, lines 1-2). Additionally, Payne teaches allocating the hedged investment budget to a hedged investment linked to an index in order to generate proceeds for supporting an amount credited to the index-linked insurance product based on index-linked earnings (col. 3, lines 49-67 – col. 4, lines 1-2).

Payne does not explicitly disclose a that upon the occurrence of a predetermined event, if the amount credited based on the index-linked earnings is not equal to at least the annual guarantee compounded over the term, using funds from one or more reserves or a risk fund to increase the amount credited to be substantially equal to the compounded annual guarantee. Schirripa discloses that upon the occurrence of a predetermined event, if the amount credited based on the index-linked earnings is not equal to at least the annual guarantee compounded over the term, using funds from one or more reserves or a risk fund to increase the amount credited to be substantially equal to the compounded annual guarantee (col. 2, lines 14-24). In reference to claims 44 and 49, Payne discloses the administrative costs and funding of the guarantee such as allocating the deducted estimated cost of the annual guarantee to the risk fund or having the risk fund comprise funds from a plurality of insurance products.

It would have been obvious to one with ordinary skill in the art to modify the index-linked life insurance product of Payne to include the provision that upon the occurrence of a predetermined event, if the amount credited based on the index-linked

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earnings is not equal to at least the annual guarantee compounded over the term, using funds from one or more reserves or a risk fund to increase the amount credited to be substantially equal to the compounded annual guarantee because Schirripa teaches using funds from a reserve or risk fund to fulfill the guarantee as is common in the annuity and life insurance field because it encourages clients to use the services and protects the financial interests of the insuring company and the client.

6. Additionally, in reference to claim 50, Payne discloses creating a segment of the index-linked life insurance product having a term, wherein the term is comprised of a plurality of term periods; determining an initial index value at the end of each term period for the duration of the term, determining an index value for the ended term period, determining a current segment value by crediting to the segment an amount based on the index-linked earnings comprising a percentage difference between the index value for the ended term period and the initial index value (col. 3, lines 4-67 – col. 4, lines 1-2).

7. In reference to claims 36 – 38, 51 – 54 and 69 - 72, Payne discloses a predetermined even including expiration of the term, early surrender or death (col. 2, lines 34-53). Additionally, Payne discloses a length of term that is one year or at least one year (col. 3, lines 12-36). Further, Payne discloses the term expiring at death (col. 2, lines 34-53).

8. In reference to claims 39 – 43, 45 – 48, 55 – 67 and 73 – 83, Payne teaches the estimated cost of the annual guarantee comprising an estimate of the funds for increasing the index-linked earnings to approximately equal the annual guarantee

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compounded over the term (col. 3, lines 12 – 36); the estimated cost of the annual guarantee is determined, at least in part, through a historical analysis comprising a back-casting of a historical performance rate of the index over an analysis period to determine a cost of the annual guarantee during a plurality of hypothetical terms of the index-linked life insurance product (col. 3, lines 12 – 36); the index-linked insurance product further has one or more features, wherein the features may include at least one of a annual minimum growth rate, an annual capped growth rate and a participation rate and the estimated cost of the annual guarantee comprises an estimate of the funds for increasing the index-linked earnings to approximately equal to the annual guarantee compounded over the term, taking into account the features of the index-linked insurance product (col. 3, lines 12-67 – col. 4, lines 1-33); one or more features of the index-linked insurance product is selectively reset each year during the term (col. 3, lines 12-67 – col. 4, lines 1-33); determining the hedged investment budget including deducting from the projected annual fixed income yield a product spread and the estimated cost of the annual guarantee (col. 4, lines 3-33); the hedged investment comprises an at-the-money hedge (col. 3, lines 4-67 – col. 4, lines 1-2); an annual capped growth rate and purchasing a plurality of at-the-money call options and a sale of a plurality of call options having a strike price that is out-of-the-money by an amount equal to the annual capped growth rate (col. 3, lines 4-67 – col. 4, lines 1-2); the annual capped growth rate is selectively reset each year during the term (col. 3, lines 4-67 – col. 4, lines 1-2); the hedged investment is designed to yield the greater of the annual

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guarantee or a percentage gain attributable to the index (col. 3, lines 4-67 – col. 4, lines 1-2).

9. Additionally, in reference to claims 39 – 43, 45 – 48, 55 – 67 and 73 – 83, Payne discloses term periods, cost factors and valuation criteria (col. 3, lines 12-67 – col. 4, lines 1-33).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: King et al (US Patent No. 5,704,045), Lange (US Patent No. 6,321,212), Wallman (US Patent No. 6,360,210), Reiss (US Patent Application 2002/0138388), Lange (US Patent Application 2002/0147670), Ruggieri (US Patent Application 2005/0154617) and Rabson (US Patent Application 2004/0030625).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jocelyn W. Greimel whose telephone number is (571) 272-3734. The examiner can normally be reached on M-F 8:30 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jocelyn Greimel  
Examiner  
April 26, 2006

A handwritten signature in black ink, appearing to read 'H. M. Kazimi', with a long horizontal flourish extending to the right.

**HANI M. KAZIMI**  
**PRIMARY EXAMINER**